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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,649

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EXAMINER

WOMACK, DOMINIQUE A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/28/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,649	<b>Applicant(s)</b> VAN CUIJK, WILHELMUS HENRICUS MARIA	
	<b>Examiner</b> DOMINIQUE WOMACK	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 16-26 are pending. Applicant's amendments filed on 9/1/2009 have been acknowledged.

### ***Rejections***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Any rejections and/or objections made in the previous office action, dated June 9, 2009 are hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

4. **Claims 16-21 and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Goltsos [US Pat No. 4,013,798].**
5. **Regarding claims 16, 18 and 26,** Goltsos discloses a container comprising compartments shielded from the environment wherein the compartments are separated from each other such that a medium cannot flow there between (Fig. 7; col. 5, lines 21-36). The compartments containing water laden food may be individually vented to the atmosphere by forming a portion of the side wall and adjacent rim defining each of those compartments to include a separate notch (col. 5, lines 28-33). The entire covered compartment including the vent notch (Fig.7, #32') is considered to be an openable passage opening. Therefore, each

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compartment shown in Figure 7 has differing passage openings. Furthermore, the compartments contain different foods with different moisture contents. The content and size of compartments affects the amount of pressure generated as well as the amount of pressure the compartment can withstand. The weakened seals around the vent notch in each compartment allow the individual compartments to vent separately from one another once the vapor pressure build up excessively within the individual compartment (col.4, lines 24-32).

6. **Regarding claim 17**, Goltsos discloses that each compartment is shielded by a plastic film (Fig. 7, #31; col. 5, lines 25-28).

7. **Regarding claim 19**, the compartments of Goltsos would only produce water vapor after a certain temperature had been exceeded within the compartment. It is considered that an increase of vapor pressure in the compartment which opens the vent notch occurs after a determined temperature, such as the temperature at which water vapor is produced, is exceeded.

8. **Regarding claim 20**, the combination of the cover and the opening can be considered to be a pressure valve.

9. **Regarding claim 21**, Goltsos discloses in Figure 7 compartments where the total passage surface of the one compartment is smaller than another compartment. The entire compartment is interpreted as a passage opening.

10. **Regarding claim 24**, the seal is apart of the material layer and therefore the passage opening is considered to be arranged in the material layer which shields the compartment from the environment. It is noted that "opening" is considered to be the point at which the material becomes separated from the container.

11. **Regarding claim 25**, the vent notch is formed in the container (col. 5, lines 28-33).

***Claim Rejections - 35 USC § 103***

12. **Claims 19 (in the alternative) and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goltsos [US Pat No. 4,013,798] in view of Beizermann [US Pat No. 5,587,192].**

13. **Regarding claim 19,** Goltsos fails to disclose the use of passage openings that are blocked prior to use and open under the influence of a determined temperature being exceeded.

14. **Regarding claims 22 and 23,** Goltsos fails to disclose passage openings that a blocked by means of a cover element fixed with an adhesive layer, wherein the adhesive later softens at a determined temperature.

15. Beizermann discloses a gas tight container of the tray variety intended to undergo heat treatment. Beizermann discloses a container which comprises a body with a lip, sealed hermetically by a film and having a hole provided in the lip, characterized by a layer of a substance having a melting point between 60° C to 150° C, which is interposed between the film and the part of the lip around the hole (col. 2, lines 19-24). The film seals the hole and prevents gaseous communication between the hole and the recessed portion of the tray under temperature conditions less than the melting point of the adhesive layer between the film and tray such that when said container and product are heat processed and said film flexes away from said tray, said hot melt adhesive layer softens and releases said second bond between said upper surface of the lip and said film to expose said hole to gaseous communication between the hole and the recessed portion of the tray, thus enabling venting of the container (col. 4, lines 14-24). Thus, during the cooking phase, air, steam and gases are able to escape through the opening allowing the inside of the tray to communicate with the outside (col. 3, lines 4-6).

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16. It would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the temperature responsive sealing of Beizermann to modify the sealing arrangement of Goltso's in order to vent the food package when it reaches a certain temperature. One of ordinary skill in the art would be motivated to vent the food package when it reaches a certain temperature because Beizermann discloses that this type of sealing arrangement enables air, steam and gases escape through the opening in the tray once the melting point of the hot melt adhesive has been reached.

***Response to Arguments***

17. Applicant's arguments filed 9/1/2009 regarding claim 16 have been fully considered but they are not persuasive.

18. Applicant's amendments have overcome the 112-second paragraph rejection of the previous office action.

19. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., underpressure valves acting at different pressure levels and passage openings of different total areas) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

20. Applicant argues that US Patent No. 4,013,798 to Goltso's fails to suggest that the maximum pressure will vary between compartments. However, the compartments of Goltso's are interpreted to have different maximum pressures based on the size and content of the compartments. The compartments contain different foods and each of the foods is expected to

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have different water content and to produce a different amount of water vapor upon heating. The different sizes of the compartments are expected to impact the amount of pressurization of the compartment itself. The area gases have to expand upon heating is varied given the different sizes.

21. Based upon the teachings of Goltsos, the rejections of record are maintained.

### ***Conclusion***

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

21. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIQUE WOMACK whose telephone number is (571) 270-7366. The examiner can normally be reached on Monday-Thursday, 9:30am-6:00pm.

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23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W./

Dominique Womack  
Examiner, Art Unit 1794

15 December 2009

/Jennifer McNeil/

Supervisory Patent Examiner, Art Unit 1794